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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Cung Le, Nathan Quarry, Jon Fitch, Brandon
Vera, Luis Javier Vazquez, and Kyle Kingsbury,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

Defendant.

Case No.: 2:15-cv-01045-RFB-BNW

**PLAINTIFFS' MOTION IN LIMINE NO. 18
TO EXCLUDE EVIDENCE CONCERNING
EVENTS, CONDUCT, OR FACTS WHERE
ZUFFA OBJECTED TO AND DID NOT
PRODUCE DISCOVERY CONCERNING
SUCH EVENTS, CONDUCT, OR FACTS**

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1 Plaintiffs Cung Le, Jon Fitch, Brandon Vera, Luis Javier Vazquez, and Kyle Kingsbury
2 (“Plaintiffs”) file this Motion in Limine to Exclude Evidence Concerning Events, Conduct, Or Facts
3 Where Defendant Zuffa, LLC (“Defendant” or “Zuffa”) Objected to and Did Not Produce Discovery
4 Concerning Such Events Conduct or Facts.

5 This Motion seeks to exclude testimony and other evidence concerning events, conduct, or facts
6 prior to January 1, 2005 because such older material—in Zuffa’s own words—is “not relevant or
7 probative” of the claims or defenses in this case. Hrg. Tr. at 22, ECF No. 210. Zuffa objected to
8 searching for such materials, or even reviewing material when found, and did not produce materials
9 from the pre-January 1, 2005 unless such materials were contract or correspondence documents relating
10 to Plaintiffs or other fighters in the Class. Zuffa should not be permitted to introduce evidence from that
11 pre-January 1, 2005 period on any other subject.

12 When Plaintiffs served their First Set of Requests for Production of Documents to Zuffa in
13 April 2015, Plaintiffs defined the Relevant Time Period as commencing on July 1, 2000. Zuffa objected
14 to searching for, reviewing, and producing any documents from a period beginning in 2000. Zuffa
15 proclaimed that what happened that long ago “is not relevant or probative” of the issues in this case.

16 Zuffa’s objection to Plaintiffs’ time-period led to the parties meeting and conferring concerning
17 the scope of the relevant time period for discovery. Zuffa ultimately agreed to searching for, reviewing,
18 and producing only a limited set of materials older than January 1, 2005. Specifically, Zuffa agreed to
19 produce documents concerning Plaintiffs and their managers, agents, and representatives, and materials
20 from its centrally maintained fighter contract and correspondence documents for all fighters in the Bout
21 Class, both without a date limitation. ECF No. 199 at 4, 16-17. Zuffa further proposed to search,
22 review, and produce electronic contract files containing scanned contracts from 2000. ECF No. 199 at
23 4, 16-17. Zuffa objected to searching for, reviewing, and producing documents concerning any other
24 topics prior to January 1, 2005.

25 BACKGROUND

26 In response to Plaintiffs’ First Set of Requests for Production of Documents and First Set of
27 Interrogatories, Zuffa stated a general objection to Plaintiffs’ Relevant Time Period beginning on July
28

1, 2000 “is overbroad because it stretches well beyond the period which is the basis of the present action.” Zuffa proceeded to object to individual document requests because they sought “documents over a 15-year time period....” **Exh. T**, Defendant Zuffa, LLC’s Responses to Plaintiffs’ First Set of Requests for Production (“First RFP Responses”) (June 9, 2015).¹

On August 26, 2015, Plaintiffs wrote Zuffa a letter confirming the discussions in the parties’ meet and confer. *See Exh. U*, Letter from John Cove to Michael Dell’Angelo (Aug. 26, 2015). Among the topics discussed was Plaintiffs’ request (and Zuffa’s rejection of the request) that Zuffa preserve documents going back to 2000. *Id.* In Plaintiffs’ follow-up letter of September 7, 2015, Plaintiffs further described the dispute, namely that Zuffa refused to apply a Relevant Time Period beginning in 2000 and that Plaintiffs proposed a compromise of January 1, 2005. *See Exh. V*, Letter from Michael Dell’Angelo to John Cove (Sept. 7, 2015).

Following further meet and confer efforts concerning the scope of Zuffa’s responses to Plaintiffs’ document requests, the parties summarized the status of the meet and confer on the Relevant Time Period in a Joint Status Report (“JSR”) filed with the Court. ECF No. 199 (Nov. 16, 2015). In the November 16, 2015 JSR (at 4-6), the parties described their agreement (reached because of Zuffa’s objection to the time period that began in July 2000) as to time periods pertaining to specific requests. In short, the parties had agreed that Zuffa would search for, review, and produce materials relating to Plaintiffs and their managers, agents, and representatives as well as centrally maintained fighter contracts and correspondence files for fighters in the Class without a date limitation. *See id.* at 4, 16-17. Zuffa also agreed to produced electronic contract files containing scanned contracts going back to 2000. *Id.* Zuffa refused to produce other categories of documents or documents on other topics prior to 2008 or 2009. *Id.*

Plaintiffs had proposed to Zuffa a compromise Relevant Time Period that commenced on January 1, 2005 based on Zuffa’s objection to producing materials from early in the Relevant Time Period described in Plaintiffs’ First Set of Requests for Production of Documents. *See Exh. V*. Plaintiffs ultimately proposed that compromise date to the Court. *See* ECF No. 199.

¹ Exhibit citations are to the Declaration of Joseph Saveri attached hereto.

At the status conference on November 17, 2015, Zuffa’s counsel described a specific set of documents that Zuffa had located but was resisting even reviewing for responsiveness and production, stating that the collection “consist of fighter files, sponsor files, merchandise files, licensing files, acquisition files, and corporate documents, oh, and venue and event files. So it’s a smorgasbord of things that are in there.” Hrg. Tr. at 11, ECF No. 210. Zuffa’s counsel clarified that Zuffa was agreeing to produce approximately half of the materials, which were fighter files for class members, venue, and sponsor files back to 2008, merchandise files back to 2008, but was not going to even review the rest. Plaintiffs sought review and production of these materials—which dated back to 2000—for responsiveness, but Zuffa objected to doing so.

The parties and the Court then discussed a blanket Relevant Time Period commencement date of January 1, 2005—Plaintiffs’ compromise proposal based on Zuffa’s objection to producing materials from before that date. In that discussion, Zuffa’s counsel asserted that what happened that long ago—even as between 2005 and 2008—“is not relevant or probative” of the claims and defenses in this case. Hrg. Tr. at 22, ECF No. 210. Plaintiffs ultimately prevailed on having the Relevant Time Period begin in January 2005, but the Court did not Order Zuffa to review the hardcopy materials dating back to 2000 that Zuffa had located but objected to reviewing and producing responsive material from.

Based on Zuffa’s objection to Plaintiffs’ initial requests’ Relevant Time Period of July 1, 2000, and the fact that Zuffa prevailed on not even reviewing materials it located dating back to Plaintiffs’ proposed July 1, 2000 start to the Relevant Time Period, Zuffa should not be permitted to offer evidence as to conduct and occurrences prior to January 1, 2005 that are within the scope of Plaintiffs’ RFPs unless Zuffa agreed to produce documents concerning such conduct and occurrences.

LEGAL STANDARD

Generally, irrelevant evidence is not admissible. Fed. R. Evid. 402. Evidence that is not “probative” of a fact of consequence in determining the action is not relevant. *See* Fed. R. Evid. 401; *Velazquez v. City of Long Beach*, 793 F.3d 1010, 1028 (9th Cir. 2015).

In addition, Fed. R. Civ. P. 34 creates a discovery obligation for the party receiving the request. “For each item or category” in Rule 34 requests, “[t]he party to whom the request is directed must

1 respond in writing.” Fed. R. Civ. P. 34(b)(2)(A). “For each item or category, the response must either
 2 state that inspection and related activities will be permitted as requested or state with specificity the
 3 grounds for objecting to the request.” Fed. R. Civ. P. 34(b)(2)(B). Under Fed. R. Civ. P. 37(c)(1), “[i]f
 4 a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is
 5 not allowed to use that information or witness to supply evidence ... at a trial, unless the failure was
 6 substantially justified or harmless.” Rule 37(c)(1) gives “teeth” to Rule 26’s mandatory disclosure
 7 requirements by forbidding the use at trial of any information that is not properly disclosed. *Ollier v.*
 8 *Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 861 (9th Cir. 2014). Rule 37(c)(1) is a “self-
 9 executing, automatic” sanction designed to provide a strong inducement for disclosure. *Goodman v.*
 10 *Staples, The Office Superstore*, 644 F.3d 817, 827 (9th Cir. 2011). Fed. R. Civ. P. 37(a)(4) explicitly
 11 provides that an evasive or incomplete response to a discovery obligation “is to be treated as a failure to
 12 disclose, answer, or respond.” The Ninth Circuit gives “wide latitude” to a district court’s discretion to
 13 issue sanctions under Rule 37(c)(1). *Ollier*, 768 F.3d at 859. The burden is on the party facing the
 14 sanction to prove harmlessness. *See Torres v. City of Los Angeles*, 548 F.3d 1197, 1213 (9th Cir. 2008).

15 ARGUMENT

16 I. Pre-2005 Evidence Is Not Relevant and Should Be Excluded

17 As Zuffa has claimed, evidence pertaining to pre-2005 events, conduct, and facts is not relevant
 18 or probative of the claims and defenses in this matter, Hrg. Tr. at 22, ECF No. 210, and should
 19 therefore be excluded as inadmissible and irrelevant.

20 It is only now on the eve of trial, approaching nine years after Zuffa told Plaintiffs and the Court
 21 that pre-2005 evidence is not relevant and nearly seven years have fact discovery closed, that Zuffa’s
 22 new lawyers have indicated their intent to introduce evidence concerning pre-2005 events, conduct, and
 23 facts are relevant. Such gamesmanship should not be countenanced by the Court: Zuffa should be held
 24 to its prior position on relevance and pre-2005 events, conduct, and facts should be ruled inadmissible
 25 because they are not relevant.

II. Zuffa Objected to Producing Pre-2005 Evidence and Should Not Be Permitted to Introduce Evidence Concerning Pre-2005 Events, Conduct, and Occurrences

Zuffa objected to and did not search for, review, and produce documents during this pre-2005 period outside of a limited set of materials. Zuffa even located a collection of materials in its possession, custody, and control from that pre-2005 time period that Zuffa believed had responsive information in it. Zuffa refused to review these materials because, as Zuffa's counsel asserted, these older materials are "not relevant or probative." Hrg. Tr. at 22, ECF No. 210.

Now, Zuffa believes that it should be able to have its witnesses testify about events, conduct, or facts from before January 1, 2005. Zuffa's present position stands in direct opposition to its discovery position that such events, conduct, or facts are "not relevant or probative." Hrg. Tr. at 22:18-22, ECF No. 210. Zuffa should not be permitted to shirk its discovery obligations pursuant to Rule 34 so as to deprive Plaintiffs the opportunity to explore these events, conduct, and facts with the benefit of documents at deposition, and then turn around and have its witnesses testify to these events, conduct and facts without fear of impeachment materials produced in discovery.

Zuffa's incomplete production in response to Plaintiffs' Rule 34 requests is not and cannot be harmless or substantially justified. Although Plaintiffs had the opportunity to depose certain witnesses concerning events, conduct, and facts pre-dating January 1, 2005, Plaintiffs' ability to explore the potential areas that Zuffa will explore at trial was hampered by the lack of document productions concerning that pre-January 2005 period.

Fed. R. Civ. P. 37(c)(1) empowers the Court to exclude evidence where a party did not comply with its discovery obligation. That circumstance applies here. Zuffa did not comply with its discovery obligations pursuant to Fed. R. Civ. P. 34, evading review and production of documents concerning the pre-2005 period, and Zuffa should not now be permitted to cry foul as to documents it itself did not turn over in discovery.

CONCLUSION

Plaintiffs respectfully request that the Court rule evidence concerning all events, conduct, and occurrences prior to January 1, 2005 be deemed inadmissible and excluded with the exception of the

1 limited scope of materials for which Zuffa participated in discovery for that time period, namely,
2 Plaintiffs and their representatives as well as fighter contracts for members of the Class.
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1 Dated: February 29, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of February, 2024 a true and correct copy of PLAINTIFFS' MOTION IN LIMINE NO. 18 TO EXCLUDE EVIDENCE CONCERNING EVENTS, CONDUCT, OR FACTS WHERE ZUFFA OBJECTED TO AND DID NOT PRODUCE DISCOVERY CONCERNING SUCH EVENTS, CONDUCT, OR FACTS was served via the District Court of Nevada's ECF system to all counsel of record who have enrolled in this ECF system.

/s/ Joseph R. Saveri

Joseph R. Saveri